

REMARKS

This Amendment is in response to the Office action mailed June 4, 2003. Claims 33-35 are added by this Amendment. Applicant notes that claims 20-25 and 28-32 were allowed in the Office action and that claims 2-7, 11-13, and 15 were indicated as being allowable if rewritten in independent form incorporating the limitations of their base claim and any intervening claims. Claims 1-35 will be pending upon entry of this amendment.

Applicants draw the Examiner's attention to the Supplemental Information Disclosure Statement submitted June 13, 2003 and request consideration of the references cited therein. Further, an additional Supplemental Information Disclosure Statement is being submitted herewith and consideration of the references listed therein is respectfully requested.

I. Objections to the Drawings

The drawings were objected to as failing to comply with 37 CFR 1.84(p)(4) based on the assertion that reference characters "69" and "71" in Fig. 4 have both been used to designate the medial surface of the containment flap 23 and reference characters "169" and "171" in Fig. 5 have both been used to designate the lateral surface of the containment flap 123. Applicants respectfully disagree. It appears that the Office has inadvertently broken up the first inner layer 67 into two parts, a lateral, or laterally extending part, and a medial, or upward extending part. However, the respective locations of the reference numbers 69 and 71, and the corresponding lead lines, are not intended to point to different parts of the first inner layer 67. Rather the reference numbers and lead lines are only intended to indicate opposite (e.g., front and back) entire surfaces of the first inner layer 67.

As described in the specification at the paragraph beginning at page 20, line 9, each containment flap 23 (Fig. 4) of the present invention comprises a **first inner layer 67** having a **medial surface 69** and a **lateral surface 71**. (emphasis added). At page 20, lines 10-13, the specification defines the medial surface 69 as being the generally inward facing surface of the first inner layer 67 of the containment flap 23 and the lateral surface 71 as being the generally outward facing surface of the first inner layer of the containment flap.

Thus, the terms medial surface 69 and lateral surface 71 are used to describe the opposite surfaces of only the first inner layer 67 of the containment flap 23. As with any layer of material, the first inner layer 67 has two opposite surfaces which, instead of being labeled as front and back surfaces, or first and second surfaces, applicants identified as medial surface 69 and lateral surface 71. As is clearly shown in Fig. 4 the first inner layer 67 of the containment flap 23 extends laterally inward over a portion of the side panel 31 and the liner 45 and then upward from the liner (e.g., at the base 74) toward the distal end of the containment flap. The reference numeral 69 (the medial surface) therefore refers to the entire surface of the first inner layer 67 that extends laterally in opposed facing relationship with the side panel 31 and liner 45 and then faces inward toward the center of the article as the first inner layer extends up from the base 74 toward the distal end of the flap 23. Reference number 71 (the lateral surface) refers to the entire opposite surface of the first inner layer, which extends parallel to the medial surface 69.

Accordingly, applicants submit that reference characters 69 and 71 and their corresponding lead-lines as shown in Fig. 4 are consistent with the definition of "medial surface" and "lateral surface" set forth in the specification. Based on the

definitions of the medial surface 69 and lateral surface 71 provided in the specification, it is also clear in Fig. 4 that the medial surface 69 of the first inner layer 67 of the flap (e.g., the portion of the medial surface that faces the side panel 31) is secured to the side panel by adhesive 75 and to the liner 45 by adhesive 73.

Fig. 5 shows a second embodiment of the present invention having containment flaps 123 with a flap inner layer 167 having a medial surface 169 and a lateral surface 171. The definitions of "medial surface" and "lateral surface" for this embodiment are intended to be consistent with the medial surface 69 and lateral surface 71 as defined in the specification and shown in Fig. 4. Accordingly, applicants submit that the reference characters 169 and 171, and corresponding lead-lines, shown in Fig. 5 are consistent with this definition of "medial surface" and "lateral surface" set forth in the specification. The medial surface 169 of the first inner layer 167 is secured to the side panel 31 and liner 145 by adhesive 75 and 73, respectively.

Applicants therefore submit that no drawing change is necessary and respectfully request that the objection to the drawings be withdrawn. In the event that the objection is maintained, the undersigned requests a phone call from the Examiner prior to any further notice being mailed by the Office.

II. Objection to the Specification

The specification was objected to based on the Office's objection to the drawings as discussed above. Applicants have amended the portion of the specification that introduces the medial surface 69 and lateral surface 71 of the first inner layer 67, but only to correct a typographical error including the term "constructed" at page 20, line 16.

The specification is therefore submitted to be in proper form for allowance for the same reasons as set forth above in connection with the Office's objection to the drawings. Withdrawal of the objections to the specification is respectfully requested.

III. Response to Rejection of the Claims

Applicants respectfully request reconsideration of the rejection of claims 1, 8-10, 14, 16, 18, 19, 26, and 27 under 35. U.S.C. 102 as being anticipated by U.S. Patent No. 5,899,894 (Palumbo et al.).

Claim 1

The present invention is directed to a disposable absorbent personal article that reduces or eliminates leakage from the article and is particularly useful in reducing or eliminating leakage resulting from a surge of liquid waste that is discharged by the wearer. Specifically, the invention comprises a liquid permeable inner layer, an outer layer and an absorbent body disposed between the inner layer and the outer layer. A pair of containment flaps are secured to the inner layer and have a first and second layer that are adapted to define a surge chamber for receiving liquid body waste. The liquid permeable portion of the inner layer of the article is interposed between the surge chamber and the absorbent article of the body. The absorbent article of the present invention allows a surge of liquid body waste to be retained in the surge chamber and passed to the absorbent body so that leakage from the article is reduced or eliminated.

More specifically, claim 1 recites a disposable absorbent article for personal wear comprising:

an inner layer adapted for contiguity with the wearer's skin, at least a portion of said inner layer being liquid permeable;

an outer layer in opposed relation with the inner layer;

an absorbent body disposed between the inner layer and the outer layer of said article for absorbing liquid body waste; and

a pair of containment flaps secured to the inner layer of said article in spaced relation with each other, each flap having a base secured to the inner layer of said article and a distal end, at least a portion of the distal end being movable relative to said base to a position in which said distal end is spaced from the inner layer of said article, said containment flaps each comprising:

a first layer extending from the base of the flap to the distal end of said flap, said flap first layer having a lateral surface and a medial surface; and

a liquid permeable second layer in opposed relation with the medial surface of the flap first layer, said flap second layer being free from fixed engagement with at least a portion of the medial surface of said flap first layer to define a surge chamber therebetween for receiving liquid body waste, said liquid permeable portion of the inner layer of said article being interposed between the surge chamber and the absorbent body of said article.

Claim 1 is submitted to be unanticipated by and patentable over the references of record, and in particularly Palumbo et al., in that whether considered alone or in combination the references fail to show or suggest an absorbent article having an inner layer adapted

for contiguity with the wearer's skin, and containment flaps secured thereto comprising a first and second layer that define a surge chamber therebetween with a liquid permeable portion of the inner layer interposed between the surge chamber and an absorbent body of the article.

Palumbo et al. discloses a diaper having a continuous single sheet upper layer 5, a liquid impermeable layer 9 and an absorbent element 6 located between the liquid impermeable layer 9 and the upper layer 5. The absorbent element 6 is surrounded by tissue layers 7 and 8. Laterally spaced portions of the upper layer 5 are spaced outward from the absorbent element 6 by a pair of elastic elements 14 to define a pair of elasticized flaps 11. The upper layer 5 has a central zone 20 that has been perforated to allow liquid to pass through the layer, and two lateral zones 19 that are not perforated and are impermeable to liquids.

The Office action (at para. 4) characterizes the tissue layer 7 as being an inner layer as recited in claim 1 of the present application. Applicants disagree. Claim 1 recites that the inner layer is adapted for contiguity with the wearer's skin. As is clearly shown in the drawings of the present application, the liner 45 is adapted for contiguity with the wearer's skin, i.e., it is positioned relative to the other components of the article so as to allow contact or closely spaced relation with the wearer's skin without intervening structure.

In contrast, Palumbo et al. discloses the upper layer 5 as being interposed between the tissue layer 7 and the wearer's skin. Thus, **the tissue layer 7 is not adapted for contiguity with the wearer's skin as recited in claim 1.** Rather only the upper layer 5 of Palumbo et al. can be characterized as being contiguous with the wearer's skin when the diaper is worn. However, were the Office to adopt such a position, Palumbo et

al. would then fail to disclose or suggest containment flaps secured to an inner layer, as well as the particular features of the flaps recited in claim 1.

Claims 2-19, depending directly or indirectly from claim 1, are patentable over Palumbo et al. and the other references of record for the same reasons as claim 1.

Claim 26

Claim 26 is directed to toilet training pants having an inner layer and a pair of containment flaps secured thereto comprising substantially the same elements as set forth for claim 1. Claim 26 is therefore submitted to be unanticipated and patentable over Palumbo et al. and the other references of record for the same reasons as set forth above for claim 1. Claim 27 depends directly from claim 26 and is submitted to be patentable over Palumbo et al. and the other references of record for the same reasons as claim 26.

IV. New Claims

New claim 33 depends from claim 1 and is directed to a feature of the disposable absorbent article wherein each containment flap of the article has elastic material so that the flap extends away from the liner.

New claim 34 depends from claim 20 and is directed to the same feature as claim 33.

New claim 35 depends from claim 26 and is directed to the feature of the toilet training pants wherein each containment flap of the toilet training pants has elastic material so that the flap extends away from the liner.

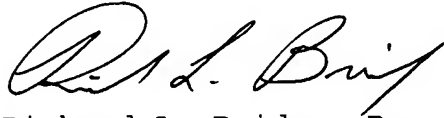
No new matter is added by these claims as support for these claims may be found at least at page 21, line 19 to page 22, line 20 and the figures of the application.

V. Conclusion

In view of the foregoing, reconsideration and allowance of claims 1-32 is respectfully requested. Consideration and allowance of new claims 33-35 is also requested.

A check and fee transmittal are enclosed for payment of the additional claims fee and submission of the Supplemental Information Disclosure Statement. The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment to Deposit Account No. 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully submitted,



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